

## **REMARKS**

Claims 1 and 44 have been amended to clarify the subject matter regarded as the invention. Claims 1 – 44 are pending.

The Examiner has rejected independent claims 1 and 44 under 35 U.S.C. 103(a) as being unpatentable over Zigmond et al., in view of Eldering, and in further view of Tetsumura.

The rejection is respectfully traversed. Zigmond describes selecting advertisements for insertion based on viewer information, such as that obtained by having a viewer select an advertisement for viewing from many (see, e.g., Col 9, lines 26 – 38) or by having viewers log in (see, e.g., Col 9, lines 59 – 65). Eldering describes correlating an advertisement characterization with a consumer profile, providing the correlation result to advertisers, and allowing advertisers to bid for an advertisement opportunity based on the correlation result. Tetsumura describes having a viewer press buttons on a remote controller that correspond to viewers present in a room in order to determine the number and identity of people watching a particular program (see, e.g., Figure 5). Claims 1 and 44 have been amended to recite, “an ascertained physical characteristic regarding the content observer at the content display site is obtained based at least in part on data that is passively sensed without requiring interaction by the content observer at the content display site.” For convenience and without limitation, some embodiments that use cameras, microphones, retinal scanners and/or fingerprint scanners are described in page 33, line 18 – page 36, line 15. Zigmon, Eldering, and Tetsumura do not teach, either alone or in combination, obtaining an ascertained physical characteristic based on data that is passively sensed without requiring interaction by a viewer. It is therefore believed that claims 1 and 44 are allowable.

Claims 2 – 43 depend from claim 1 and are believed to be allowable for the same reasons described above.

Reconsideration of the application and allowance of all claims are respectfully requested based on the preceding remarks. If at any time the Examiner believes that an interview would be helpful, please contact the undersigned.

Respectfully submitted,

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